

The Honorable Barbara J. Rothstein

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOHN B. SHATTUCK,

Plaintiff,

v.

A1A, INC, et al.,

Defendants.

Civil Action No. 2:21-cv-00945-BJR

ORDER GRANTING STAY; DENYING  
EXPEDITED REVIEW; DEFERRING  
JUDGMENT ON REMAND

**I. INTRODUCTION**

Plaintiff John B. Shattuck filed this products liability lawsuit against the manufacturers, distributors, and marketers of a hip implant referred to as the “Pinnacle Device.” Plaintiff alleges that defendants Medical Device Business Services, Inc. (f/k/a, Depuy, Inc., Depuy Orthopedics, Inc., Depuy Orthopaedics, Inc.), Depuy Synthes Sales, Inc., Johnson & Johnson Services, Inc., and Johnson & Johnson (“Manufacturer Defendants”) designed and manufactured the defective Pinnacle Device, and that A1A, Inc. and David Eva (“Distributor Defendants”) (collectively, “Defendants”) distributed and marketed the Device, knowing that it could have been defective.<sup>1</sup>

<sup>1</sup> Plaintiff also names “John Does 1-10” as defendants, but the Court cannot ascertain who Plaintiff suspects these individuals are or what allegations are brought against them.

1 Plaintiff originally filed this action in Washington Superior Court, but Defendants removed to this  
2 Court. Before the Court is Plaintiff's motion to remand, Plaintiff's motion for expedited review,  
3 and Defendants' motion for a stay. Having reviewed the motions, the oppositions thereto, the  
4 record of the case, and the relevant legal authorities, the Court will grant Defendants' motion for a  
5 stay, deny Plaintiff's motion for expedited review, and defer ruling on Plaintiff's motion to remand.  
6 The reasoning for the Court's decision follows.  
7

### 8 I. BACKGROUND

9 In July 2021, Defendants removed this case based on diversity jurisdiction. *See* Dkt. No. 1.  
10 Plaintiff is a Washington citizen, and both parties agree that Distributer Defendants, also  
11 Washington citizens, destroy diversity if properly joined. *See* Dkt. No. 11 at 15-16; Dkt. No. 28 at  
12 1-2. However, Defendants allege that Distributer Defendants are fraudulently joined in order to  
13 defeat diversity jurisdiction, and that Plaintiff cannot state a claim against those defendants. Dkt.  
14 No. 28 at 1-3. Both parties make arguments on the merits of the claims against Distributer  
15 Defendants. *See* Dkt. Nos. 11, 28, 32.  
16

17 On July 19, 2021, Defendants filed notice of a related case, an MDL in the Northern District  
18 of Texas that has been handling products liability suits involving DePuy hip-replacement products  
19 since 2011. *See* Dkt. No. 19; *In re: DePuy Orthopaedics, Inc., Pinnacle Hip Implant Products*  
20 *Liability Litigation*, 3:11-mdl-2244-K (N.D. Tex.). On July 21, the Judicial Panel on Multidistrict  
21 Litigation ("JPML") issued a conditional transfer order and scheduled its final transfer  
22 determination for September 30, 2021. Dkt. No. 18 at 3. Plaintiff immediately filed a motion for  
23 expedited review, requesting that this Court rule on his motion to remand before September 30. *See*  
24 Dkt. 18. Defendants opposed the motion and filed a motion to stay the case until the JPML decides  
25 whether to transfer the case to the MDL. Dkt. Nos. 12, 26.  
26  
27

## II. DISCUSSION

The Court will first address Defendants’ motion for a stay, because the Court’s decision on that motion necessarily determines the outcome of Plaintiff’s motions.

“The decision to grant or deny a temporary stay of proceedings pending a ruling on the transfer of a matter to the JPML lies within the court’s discretion.” *Short v. Hyundai Motor America Inc.*, 2019 WL 3067251, at \*2 (W.D. Wash. July 12, 2019). The Court considers three factors to determine whether a stay is warranted: “(1) the potential prejudice to the nonmoving party if a stay is granted; (2) the hardship to the moving party if a stay is denied; and (3) the judicial resources that would be saved by avoiding duplicative litigation if the JPML grants the transfer motion.” *Id.* In the context of a pending MDL transfer, the possibility of duplicative litigation is the “most important factor.” *Id.* (citation omitted); *Stuart v. DaimlerChrysler Corp.*, No. 1:08-CV-0632 OWW GSA, 2008 WL 11388470, at \*3 (E.D. Cal. Dec. 23, 2008).

Additionally, Defendants cite a “general rule [that] federal courts . . . defer ruling on pending motions to remand in MDL litigation until after the JPM[LL]” decides whether to transfer the case. Dkt. 28 at 5 (citing *Zamudio v. 3M Co.*, No. 19cv2277 W (BGS) 2020 WL 406317, at \*1 (S.D. Cal. Jan. 24, 2020)). Defendants’ characterization of the law is supported by a long list of DePuy-related cases in which district courts in the Ninth Circuit and around the country have granted stays pending a JPML decision. *See* Dkt. No. 28 at 5-6. Notably, several of the cases Defendants cite stayed remand motions involving allegations of fraudulent joinder. *See, e.g., Sobera v. DePuy Orthopaedics, Inc.*, No. 14-cv00979-SC, 2014 U.S. Dist LEXIS 57533, at \*8 (N.D. Cal. Apr. 23, 2014) (“Allowing the MDL to decide the fraudulent joinder issue avoids unnecessary duplicative litigation across several federal districts.”); Dkt. No. 28 at 5-6; Dkt. No. 26 at 2-3. Defendants thus argue that if the Court were to rule on Plaintiff’s remand motion now, it would be departing from a widely accepted judicial practice of deferring to the MDL court. Dkt. No. 26 at 3-4.

1 Plaintiff do not contest this general rule of deference, but instead argues, under the three  
2 factors cited above, that he will be prejudiced by a stay and that the risk of inconsistent judgments  
3 is overstated. *See* Dkt. No. 33.

4 In claiming “prejudice to the nonmoving party,” Plaintiff’s principal argument is that, if this  
5 case is transferred to the MDL, he will be “subject to substantive Case Management Orders,  
6 including CMO 12 . . . and CMO 5.” *Id.* at 1. According to Plaintiff, CMO 5 has “stay[ed] all  
7 motions for remand . . . as of June 2012.” *Id.* CMO 12 allegedly imposes “onerous requirements”  
8 including “discovery and case-specific expert reports.” *Id.* at 2.

9  
10 As to the risk of inconsistent rulings, Plaintiff attempts to distinguish and downplay the  
11 significance of the other DePuy cases cited by Defendants. Plaintiff’s argument is essentially that  
12 Defendants’ supporting cases are old (from 2011-2014) and that the MDL has fundamentally  
13 changed, such that it is no longer the most efficient forum for this dispute. Plaintiff states that  
14 “[c]ircumstances in the MDL are much different in 2021, ten years later, when the MDL was in its  
15 twilight.” *Id.* at 5. Moreover, “[t]he efficiency that is contemplated by consolidation of similar  
16 cases for pre-trial work . . . and avoidance of inconsistent rulings is no longer a viable factor as the  
17 pre-trial work up and dispositive motion practice is complete.” *Id.*

18  
19 Plaintiff cites no support for this broad critique of the Texas MDL, and the Court has no  
20 reason to believe that the MDL is somehow defunct or winding down. In fact, the JPML continues  
21 to accept DuPuy cases, and the Court takes notice that at least one such case was transferred to  
22 MDL No. 2244 in May 2021. *See Murphy v. KB Orthopedics, Inc., DePuy Synthes Sales, Inc.,*  
23 *Medical Device Business Services, Inc., Johnson & Johnson, John Does 1-10, Johnson & Johnson*  
24  
25  
26  
27

1 *Services, Inc. and Karl Buhr*,<sup>2</sup> Case No. 4:2021cv00049 (D. Mont.). That case, *Murphy*, also  
 2 involved a remand motion, and the plaintiff there argued that transfer was inappropriate because  
 3 the MDL court lacked subject-matter jurisdiction. *See* Case No. 11-mdl-2244, Dkt. No. 2418 at 1.  
 4 The JPML rejected this argument, stating that “[t]he Panel has held that such jurisdictional  
 5 objections generally do not present an impediment to transfer.” *Id.*

6  
 7 Given that the MDL court is presently accepting cases that are very similar to this one, this  
 8 Court finds that considering Plaintiff’s remand motion before the JPML transfer decision would  
 9 present a serious risk of inconsistent judgments and duplicative litigation. The prejudice Plaintiff  
 10 claims he will suffer—being forced to comply with the “onerous requirements” of the MDL’s case  
 11 managements orders—is not within this Court’s control. To the extent Plaintiff has colorable  
 12 arguments that transfer would be unduly burdensome, he can present those arguments to the JPML  
 13 in opposing transfer. This Court, however, will not step in and preempt the panel’s decision.  
 14

#### 15 IV. CONCLUSION

16 For the foregoing reasons, Defendants’ motion for a stay (Dkt. No. 12) is HEREBY  
 17 GRANTED, and this case is stayed pending the JPML’s September 30 decision. Plaintiffs’ motion  
 18 for expedited review (Dkt. No. 18) is HEREBY DENIED as moot. The Court defers ruling on  
 19 Plaintiff’s motion to remand until after the JMPL decision.  
 20

21 Dated this 30th day of August, 2021.

22 

23 \_\_\_\_\_  
 24 Hon. Barbara J. Rothstein  
 25 United States District Judge

26 \_\_\_\_\_  
 27 <sup>2</sup> The Court notes that the defendants named in *Murphy* are nearly identical those named in this case.